(2)

FILED
SEP 21 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 98-307

In The

Supreme Court of the United States

October Term, 1997

EUGENE MELODY,

Petitioner,

vs.

BOROUGH OF EATONTOWN; EATONTOWN POLICE DEPARTMENT; JOSEPH PELELLA, CHIEF, Individually and Under Color of State Law; JOHN DOES, 1-100; JANE DOES, 1-100; MARK ROES, 1-100, Unnamed Conspirators; JEROME BRADY, LT., (THEN DET. SGT.), Individually and Under Color of State Law; MARY ROES, 1-100, Unnamed Conspirators,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

JOHN BOYLE
AMDUR BOYLE & MAGGS
Attorneys for the Borough of Eatontown
One Industrial Way West
Hovnanian Park B
Eatontown, NJ 07724
(732) 389-3800

CHARLES ULIANO
CHAMLIN ROSEN CAVANAUGH & ULIANO
Attorneys for Chief Joseph Pelella
268 Norwood Avenue
West Long Branch, NJ 07764
(732) 229-3200

MARTIN J. McGREEVY
Counsel of Record
RUSSELL MALTA
CARTON WITT ARVANITIS & BARISCILLO
Attorneys for Jerome Brady
4001 Route 66 at
Garden State Parkway
P.O. Box 1229
Asbury Park, NJ 07712
(732) 922-9500

PETER SHAW
SMITH SHAW SMITH & OXLEY
Attorneys for Chief Joseph Pelella for punitive damages
265 Monmouth Parkway
Highway Route 36
West Long Branch, NJ 07764
(732) 542-9025

21 PM

QUESTIONS PRESENTED FOR REVIEW

1. Whether the courts below correctly applied relevant New Jersey state law in dismissing petitioner's federal complaint following the dismissal of prior state court actions arising out of the same factual circumstances.

2. Whether the courts below correctly applied New Jersey law in giving preclusive effect to prior related state court proceedings which were voluntarily dismissed by the petitioner even though the proceedings were concluded without trial.

3. Whether the decision of the court below to dismiss plaintiff's complaint by giving the previously concluded state court proceedings the same preclusive effect in the federal court as the New Jersey courts would have given them is in conflict with this court's decision in *Migra v. Warren City School District, Bd. of Ed.*, 465 U.S. 75 (1984), and with other decisions of the various courts of appeals.

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Table of Contents	ii
Table of Cited Authorities	iii
Statement of the Case	1
Reasons for Denying the Writ	4
I. The Petition For *Certiorari* Should Be Denied Where The Only Issue Is Whether Or Not The District Court Correctly Applied New Jersey Law To Give Preclusive Effect To The Prior New Jersey State Court Proceedings.	4
II. The District Court Correctly Applied New Jersey's Entire Controversy Doctrine In Dismissing Plaintiff's Complaint Where Plaintiff Voluntarily Terminated Prior Proceedings In State Court Involving The Same Controversy.	6
III. The Opinion Of The District Court And The Judgment Order Of The Court Of Appeals Below Do Not Conflict With The Decisions Of Any Court Of Appeal Nor With The Relevant Decisions Of New Jersey's Court Of Last Resort.	10

Table of Cited Authorities

Page

IV. New Jersey's Entire Controversy Doctrine Is Substantive Law And Not Procedural And It Does Not Violate The Supremacy Clause Of The United States Constitution 12

Conclusion 14

TABLE OF CITED AUTHORITIES

Cases:

Circle Chevrolet v. Giordano, Halloran & Ciesla, 142 N.J. 280, 662 A.2d 509 (1995) 6, 9

Cogdell v. Hospital Ctr., 116 N.J. 7, 560 A.2d 1169 (1989) 6

Crispin v. Volkswagen Werk, A.G., 96 N.J. 336, 476 A.2d 250 (1984) 6

DiTrolio v. Antiles, 142 N.J. 253, 662 A.2d 494 (1995) 6, 7, 8, 9

Guzowski v. Hartman, 849 F.2d 252 (6th Cir. 1988) .. 11

Hapgood v. City of Warren, 127 F.3d 490 (6th Cir. 1997) 11

Matsushita Elec. Indus. Co., Ltd. v. Epstein, 116 S. Ct. 873 (1996) 13

Table of Cited Authorities

	Page
Migra v. Warren City School District Board of Education, 465 U.S. 75 (1984)	i, 5, 10, 12
Mortgageling Corp. v. Commonwealth Land Title, 142 N.J. 336, 662 A.2d 536 (1995)	6
Mystic Isle Development Corp. v. Perskie & Nehmad, 142 N.J. 310, 662 A.2d 523 (1995)	6, 8, 11
O'Shea v. Amaco Oil Co., 886 F.2d 584 (3rd Cir. 1989)	13
Printing Mart-Morristown, Inc. v. Rosenthal, 650 F. Supp. 1444 (D. N.J. 1987), *aff'd*, 856 F.2d 184 (3rd Cir. 1988)	13
Rycoline Products v. C&W, Unlimited, 109 F.3d 833 (3rd Cir. 1997)	13
Stolberg v. Trustees for the State Colleges of Connecticut, 541 F.2d 890 (2d Cir. 1976)	12
Torres v. Rebarchak, 814 F.2d 1219 (7th Cir. 1987)	12
United States v. Seckinger, 408 F.2d 146 (5th Cir. 1954), *rev'd on other grounds*, 397 U.S. 203 (1970)	12
Venuto v. Witco Corp., 117 F.3d 754 (3rd Cir. 1997)	10, 11

Table of Cited Authorities

	Page
Statutes:	
28 U.S.C. § 1738	5, 13
42 U.S.C. § 1983	4
N.J.S.A. 2C:12-3	1
N.J.S.A. 2A:156A-1, *et seq.*	3
Rule:	
Supreme Court Rule 10	5

STATEMENT OF THE CASE

Contrary to petitioner's description of this matter, this case is nothing more than a claim for alienation of affection dressed in the clothing of a civil rights case because of the occupation of defendant Pelella. The background which gives rise to this litigation will make this clear.

In November of 1992 the petitioner first learned that his wife, Diane Melody, intended to leave him because of an affair which she was having with Joseph Pelella. From November 1992 through May 1993 (and beyond), the petitioner was involved in a contentious divorce with Diane Melody. During this period of time there was considerable friction between the petitioner and Diane Melody and Joseph Pelella. This including signing criminal complaints and making reports to the police by both Mr. and Mrs. Melody, one against the other. App. 2-3.

On May 19, 1996 the petitioner became enraged at Joseph Pelella as a result of a conversation he had with one of his children that evening. Petitioner went to Eatontown Police Headquarters to confront Pelella. App. 353-355. He was admittedly upset and intense. When he failed to find Pelella at Headquarters, he went to the Pelella residence and had a confrontation with Sheryl Pellella (Pelella's wife). The petitioner told Mrs. Pelella, among other things, that he would "put him (Pelella) in the hospital."

Jerome Brady assisted Officer Richard Coffey in investigating this incident. In that connection he witnessed formal written statements given by Sheryl Pelella and Arlene Holiday. Based upon these statements and his investigation, Officer Coffey signed a complaint against Melody charging him with terroristic threats contrary to N.J.S.A. 2C:12-3. Based upon this complaint Officer Coffey, along with Detective Brady,

placed petitioner Melody under arrest. The arrest was effectuated in a courteous manner without incident. A few hours later petitioner Melody was released on bail. At the time of his arrest petitioner had been the Eatontown Municipal Prosecutor for approximately ten years and he was well versed in the standard operations of the department. The Eatontown police (who were well acquainted with petitioner professionally and socially) allowed petitioner free access and use of telephones.

In light of the above, petitioner had both explicit and actual knowledge of and explicit and actual notice of the fact that all of his telephone calls made from within the defendant, Borough of Eatontown's Police Department following his arrest were being automatically tape recorded on the Department's master reel-to-reel tape. Moreover, there are multiple signs conspicuously posted, informing all employees, visitors, and inmates of the monitoring and recording of all telephone calls. Because the conversations were relevant to the criminal charges, Pelella had a copy of the tape forwarded to the Monmouth County Prosecutor's Office.

As a result of negotiations between petitioner's criminal defense attorneys and Pelella (acting pro se), the criminal complaint against him was dismissed in August 1993. Petitioner, a licensed New Jersey attorney since 1980, executed a civil release as to all claims arising from his arrest. Appendix to Third Circuit, pp. 673 and 813. The petitioner received copies of all the police reports (including the May 20, 1993 report of Jerome Brady) relating to any and all interactions between himself and any member of Eatontown Police Department by September 10, 1993. After receiving copies of those police reports petitioner wrote a letter dated September 10, 1993 to Dr. Sharon Kamm threatening to file a lawsuit against her unless she retracted the statements which she had made to Detective Brady on May 20, 1993. App. 200-201. On October 25, 1993

petitioner filed a complaint pro se against Dr. Kamm concerning the statements which she had made to Sgt. Brady on May 20, 1993.[1] App. 203-204.

On December 3, 1993, petitioner filed a civil action in Monmouth County Superior Court against Diane Melody (subsequently amended) alleging that his now ex-wife had "willfully intercepted and recorded telephone calls from the plaintiff/appellant", in violation of N.J.S.A. 2A:156A-1, *et seq.* App. 5. The Complaint explicitly implicates Pelella in this cause of action. The cause of action was eventually dismissed with prejudice on March 20, 1995. App. 5.

The petitioner personally conducted the deposition of Jerome Brady as a non-party witness in the case of *Melody v. Kamm* on April 20, 1994. The petitioner then personally conducted the deposition of Dr. Kamm on May 4, 1994. The entire conduct of the Kamm case was a strategic maneuver by petitioner to gain a litigation advantage over Pelella and others while they were not parties to the case.

The petitioner testified below that it was as a result of the deposition of Dr. Kamm that he came to believe that the information contained in Brady's report that was attributed to her was false. This lawsuit, containing allegations against Pelella and Brady with respect to their participation in the investigation of the criminal complaint against the petitioner was filed on May 18, 1994. Petitioner's suit against Dr. Kamm was dismissed in September 1994. App. 4.

---

1. It should be noted that petitioner erroneously asserts that Dr. Kamm's statements formed the basis of his arrest. In actuality the arrest was based on the statements of Mrs. Pelella and Ms. Haliday which were taken before the arrest. Brady did not interview Dr. Kamm until after the petitioner had been arrested and released.

Contrary to petitioner's assertions in his petitions, all of his arguments were presented to the district court which completely considered and rejected them. Likewise, the Third Circuit panel was fully briefed on all of the issues now asserted by the petitioner and entertained extensive oral argument on the matter. After careful and thorough consideration, the Third Circuit found the appeal to be so entirely lacking in merit that it affirmed the district court's judgment by judgment order. Both petitions for rehearing were likewise summarily rejected. These determinations do not reflect a lack of diligence on the part of district court and Third Circuit as petitioner asserts, but rather demonstrate the utter lack of merit of petitioner's position.

REASONS FOR DENYING THE WRIT

I.

THE PETITION FOR *CERTIORARI* SHOULD BE DENIED WHERE THE ONLY ISSUE IS WHETHER OR NOT THE DISTRICT COURT CORRECTLY APPLIED NEW JERSEY LAW TO GIVE PRECLUSIVE EFFECT TO THE PRIOR NEW JERSEY STATE COURT PROCEEDINGS.

The petitioner argued strenuously below, before both the District Court and the Third Circuit, that 42 U.S.C. § 1983 prevents a prior state court proceeding from barring a subsequent civil rights action in Federal Court where the plaintiff had not actually raised his civil rights claim in the prior state court action. The first six pages of the legal argument of this petition under two sub-headings make the same argument before conceding the correct principal of law which applies to this case. Petitioner's brief at p. 16. Even then the petitioner states the holding in a weak and backhanded manner. To state

the law correctly (in this Court's own words): "We must reject the view that Section 1983 prevents the judgment in petitioner's state court proceeding from creating a claim preclusion bar in this case." *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 84 (1984). Prior proceedings in state court must be given the same preclusive effect in federal court that such proceedings would have been given in the state court in which the prior case arose. *Id.* at 85. The Supreme Court followed that course precisely in *Migra* by then turning to a review and analysis of Ohio's law of claim preclusion. *Id.* at 85-87.

The only issue (as Point I(c) of the petition implicitly concedes) is whether or not the district court correctly applied New Jersey law in giving preclusive effect to petitioner's prior state court proceedings in dismissing the federal complaint. As such, this case is unworthy of a writ of *certiorari* regardless of the correctness of the district court and the Third Circuit in determining that New Jersey would have given preclusive effect to the prior proceedings. *See* Supreme Court Rule 10. Although the rules do not control the court's discretion in this matter, the writ should be "rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." *Id.* In this case the district court correctly stated the applicable rule of law: "Under the Full Faith and Credit Clause 28 U.S.C. § 1738, therefore, this court must apply New Jersey law to determine the preclusive effect of a New Jersey state court disposition." *Parell Memorandum*, App. 8, n.3.

Virtually the entire Discussion portion of Judge Parell's Memorandum consists of a careful and thorough analysis of New Jersey's Entire Controversy Doctrine and its application to the particular facts of the case at bar. Although we demonstrate below that the district court's decision was correct, even if we assume *arguendo* that the district court erred in its

application of this law to the specific facts of this case (and that the court of appeals erred in its summary affirmance), that does not supply a sufficient basis to support the grant of a writ of *certiorari*.

II.

THE DISTRICT COURT CORRECTLY APPLIED NEW JERSEY'S ENTIRE CONTROVERSY DOCTRINE IN DISMISSING PLAINTIFF'S COMPLAINT WHERE PLAINTIFF VOLUNTARILY TERMINATED PRIOR PROCEEDINGS IN STATE COURT INVOLVING THE SAME CONTROVERSY.

On August 1, 1995 the highest court of New Jersey issued not one but four separate opinions applying the entire controversy doctrine to bar subsequent or successive lawsuits in a variety of contexts and factual circumstances. *DiTrolio v. Antiles*, 142 N.J. 253, 662 A.2d 494 (1995); *Circle Chevrolet v. Giordano, Halloran & Ciesla*, 142 N.J. 280, 662 A.2d 509 (1995); *Mystic Isle Development Corp. v. Perskie & Nehmad*, 142 N.J. 310, 662 A.2d 523 (1995); and *Mortgageling Corp. v. Commonwealth Land Title*, 142 N.J. 336, 662 A.2d 536 (1995). Simply stated, the entire controversy doctrine as applied by the State of New Jersey mandates the joinder of all claims and all parties with a material interest in a particular legal controversy in a single litigation in one court. *DiTrolio*, *supra*, at 253. Although the doctrine had long been applied to different claims involving parties already named in a particular lawsuit (*see, e.g., Crispin v. Volkswagen Werk, A.G.*, 96 N.J. 336, 476 A.2d 250 (1984)), New Jersey first extended the doctrine to mandate the joinder of all interested parties more recently, in 1989. *Cogdell v. Hospital Ctr.*, 116 N.J. 7, 23, 560 A.2d 1169 (1989).

As the four cases decided in 1995 make clear, it has been the law of New Jersey since 1989 that a plaintiff who omits parties in an earlier action will be precluded from bringing a successive action against those parties where the claims constitute one controversy for the purposes of the doctrine. *DiTrolio, supra*. The district court found, and petitioner presented nothing to refute, that his federal action bases its claims on the same controversy which formed the basis of petitioner's state court litigation. App. 13-15 and App. 4-5.

The New Jersey Supreme Court stated that

> [i]n determining whether successive claims constitute one controversy for purposes of the doctrine, the central consideration is whether the claims against the different parties arise from related facts or the same transaction or series of transaction.

Id. (citations omitted). The court emphasized that "[i]t is the core set of facts that provides the link between distinct claims against the same or different parties and triggers the requirement that they be determined in one proceeding." *Id.* at 267-68. It is the relationship between the facts which support the two different complaints, rather than any technical difference in the causes of action (whether they be in law or equity) that brings the separate complaints within the purview of the entire controversy doctrine. *Id.* at 269.

> The entire controversy doctrine does not require commonality of legal issues. Rather, the determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts.

Id. at 271. Furthermore,

> A controversy between or among persons that arises from a core set of related factual circumstances may trigger different claims against different parties. It is the commonality of facts, rather than the commonality of issues, parties or remedies that defines the scope of the controversy and implicates the joinder requirements of the entire controversy doctrine.

Id. at 272.

The petitioner places particular emphasis on the assertion that the case of *Melody v. Kamm* was dismissed without prejudice in arguing that the district court erred in its application of the entire controversy doctrine to this case. However, law on the doctrine is directly contrary to this proposition. Where a plaintiff intentionally manipulates the judicial system and fragments litigation in order to obtain a strategic advantage over other parties, the principles underlying the entire controversy doctrine mandate that the subsequent suit be barred even though the prior proceeding was dismissed without prejudice. *Mystic Isle*, *supra*, 142 N.J. at 333, 662 A.2d 523 (1995). In that case the plaintiff "deliberately contrived to have one claim dismissed in the Atlantic County action in order to circumvent the preclusive effect of the entire controversy doctrine." *Id.* The court also noted that the plaintiff had demonstrated no intention of continuing the action which had been dismissed without prejudice. *Id.* at 334.

It is clear from the record that the plaintiff was already contemplating making claims based upon alleged illegal wire tapping and false arrest. A review of the manner in which the depositions themselves were conducted and the questions which the petitioner (at the time *pro se*) asked, provides further compelling evidence that the Kamm lawsuit was but one

element of a larger design to bring far more comprehensive claims against other parties not named in that lawsuit. This is what the entire controversy doctrine is expressly designed to prohibit. Petitioner attempted to make the *Melody v. Kamm* case but a single inning, rather than the entire ball game, contrary to New Jersey's entire controversy doctrine. *Circle Chevrolet, supra*, 142 N.J. at 289.

Even if the various actions allege different causes of action in law and equity, if the factual bases of the actions are the same, the plaintiff cannot fractionalize his litigation in order to save the second suit from dismissal.

The facts of this case are almost identical with those in *DiTrolio*. In the first proceeding involved in that case the plaintiff entered into a stipulation of settlement with the original party defendants, filed a dismissal without prejudice and explicitly stated in their written settlement agreement that the stipulation was not to prevent the plaintiff from pursuing other actions against other individuals who were not defendants in the first suit. *DiTrolio, supra*, 142 N.J. at 265, 662 A.2d 494. The plaintiff attempted to explicitly preserve his later suit against individual defendants who had been represented as witnesses in the earlier proceeding. *Id.* Thus, in two separate decisions of the highest court of New Jersey a dismissal without prejudice in prior proceedings was sufficient to invoke claim preclusion against plaintiffs in subsequent proceedings. The petition's assertion that this is contrary to New Jersey law is a blatant misstatement.

III.

THE OPINION OF THE DISTRICT COURT AND THE JUDGMENT ORDER OF THE COURT OF APPEALS BELOW DO NOT CONFLICT WITH THE DECISIONS OF ANY COURT OF APPEAL NOR WITH THE RELEVANT DECISIONS OF NEW JERSEY'S COURT OF LAST RESORT.

Context is essential to meaning, and taking statements out of context can seriously distort meaning. In the extreme case, taking a statement out of context can pervert the intended meaning of a statement to its exact opposite. Point II of the petition is a textbook example of this extreme form of distortion.

As explained in Point I of this brief, supra, the district court correctly stated that it was obliged to apply New Jersey law to determine the preclusive effect of the prior New Jersey state court proceedings in order to determine the outcome of the motions before it. App. 8, n.3.[2] As this brief pointed out in Point I, supra, (and as petitioner essentially concedes, this court's decision in *Migra*, so holds and controls. Petition, 16-17.) The case is cited in the petition as conflicting with the decision below does not in fact conflict.

The petition relies on *Venuto v. Witco Corp.*, 117 F.3d 754 (3rd Cir. 1997), and cases cited therein to support the argument that a dismissal without prejudice does not operate to preclude a subsequent action. Petition at 22. This is far too broad a description of that case. The Third Circuit in the *Venuto* decision

---

2. The petition criticizes the district court for placing this analysis in a footnote as if the court's footnote constituted no part of its decision. On the contrary, relegating this portion of the decision to a footnote was appropriate since it constitutes black letter law which should not require further explication.

explicitly recognized that under certain circumstances New Jersey **does** give preclusive effect to prior litigation dismissed without prejudice. 117 F.3d at 762. However, the court applied the law set forth in *Mystic Isle* to the particular facts of the *Venuto* case. *Id.* The court found that the plaintiff in that case "complied with the dictates of the Entire Controversy Doctrine and undertook to present all claims for the court's decision on how best to structure the litigation." Because the trial court itself had decided (over plaintiff's objection) that the claims should be determined in separate suits, this did not form a basis for the application of the Entire Controversy Doctrine. *Id.* Obviously, those are not the facts of this case. The petitioner did not seek to bring his claims in the earlier state court proceedings, much less obtain the express authorization from the state court to preserve his other claims. Rather, he unilaterally withheld his claims from the first action, consented to dismissal of the first action and sought to bring his claims in a separate proceeding. Under these circumstances, the highest court of New Jersey **does** apply preclusive effect to the earlier proceeding, despite its having been dismissed "without prejudice." Point II, *supra*.

The cases from other jurisdictions referred to in the petition are likewise unavailing to the petitioner. In *Guzowski v. Hartman*, 849 F.2d 252, 255 (6th Cir. 1988), the case was one involving federal law and therefore the court applied federal *res judicata* rules. In *Hapgood v. City of Warren*, 127 F.3d 490, 493 (6th Cir. 1997), the case involved the application of a prior state court proceeding and therefore the court applied the claim preclusion law of Ohio in rendering its decision. That is precisely what the district court did in this case.

In the Seventh Circuit case cited by petitioner, the Court of Appeals likewise applied Illinois State law in order to determine the effect that the prior state proceeding would have

on the pending federal case. *Torres v. Rebarchak*, 814 F.2d 1219, 1223 (7th Cir. 1987). The Second Circuit case relied on by petitioner, *Stolberg v. Trustees for the State Colleges of Connecticut*, 541 F.2d 890 (2d Cir. 1976), does not even implicate the full faith and credit doctrine. In that case the Court of Appeals found that no second or different action had been brought. *Id.* at 893. The court determined that the petition being reviewed was an enforcement of the prior judgment already entered, and not a separate proceeding. *Id.*

The Fifth Circuit case referenced in the petition is *United States v. Seckinger*, 408 F.2d 146 (5th Cir. 1954), *rev'd on other grounds*, 397 U.S. 203 (1970). That case involved the application of federal law. *Id.* at 149. Therefore, its holding can have not application to this case which requires the application of New Jersey law.

Without belaboring the argument, the same can be said for all of the cases cited by the petitioner. To the extent that any case can be read to apply some law other than the law of the jurisdiction in which the first proceeding took place in giving effect to that proceeding, it would be inconsistent with this court's explicit holding in *Migra*, *supra*, and therefore must be disregarded.

IV.

NEW JERSEY'S ENTIRE CONTROVERSY DOCTRINE IS SUBSTANTIVE LAW AND NOT PROCEDURAL AND IT DOES NOT VIOLATE THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

Contrary to petitioner's unsupported assertion, it is settled that New Jersey's Entire Controvery Doctrine is one of

substantive law. *Rycoline Products v. C&W, Unlimited*, 109 F.3d 833, 887 (3rd Cir. 1997). The explicit finding of the *Rycoline* case is implicit in subsequent federal court decisions which afford preclusive effect to prior New Jersey State Court proceedings pursuant to the Entire Controversy Doctrine. *See, e.g., Printing Mart-Morristown, Inc. v. Rosenthal*, 650 F. Supp. 1444, 1447 (D. N.J. 1987), *aff'd*, 856 F.2d 184 (3rd Cir. 1988); *O'Shea v. Amaco Oil Co.*, 886 F.2d 584 (3rd Cir. 1989).

It should be noted that although most of the cases speak in terms of "judgments," both Article IV, Paragraph 1 of the United States Constitution and 25 U.S.C. § 1738 speak in terms of "judicial proceedings." App. 23 and App. 26. If anything, the application of Section 1738 by the United States Supreme Court has been an expanding one, rather than a narrow one. *See, e.g., Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 116 S. Ct. 873 (1996). As the courts below found absolutely no merit to petitioner's arguments that the Entire Controversy Doctrine violates the constitution on equal protections grounds (App. 17), this Court should reject petitioner's unsupported and novel theory (raised for the first time in this Petition) that the application of the full faith and credit clause and the full faith and credit act violate the supremacy clause.

CONCLUSION

For the reasons stated above, the Petition for Writ of *Certiorari* should be denied.

Respectfully submitted,

MARTIN J. McGREEVY
Counsel of Record
RUSSELL MALTA
CARTON WITT ARVANITIS
& BARISCILLO
Attorneys for Jerome Brady
4001 Route 66 at
Garden State Parkway
P.O. Box 1229
Asbury Park, NJ 07712
(732) 922-9500

PETER SHAW
SMITH SHAW SMITH & OXLEY
Attorneys for Chief Joseph Pelella
for punitive damages
265 Monmouth Parkway
Highway Route 36
West Long Branch, NJ 07764
(732) 542-9025

JOHN BOYLE
AMDUR BOYLE & MAGGS
Attorneys for the Borough of
Eatontown
One Industrial Way West
Hovnanian Park B
Eatontown, NJ 07724
(732) 389-3800

(Continued)

CHARLES ULIANO
CHAMLIN ROSEN CAVANAUGH
& ULIANO
Attorneys for Chief Joseph Pelella
268 Norwood Avenue
West Long Branch, NJ 07764
(732) 229-3200